TRUSTS — LIMITATION OF ACTIONS — EFFECT OF DELAY BY SUBSTITUTED TRUSTEE UPON RIGHTS OF INFANT *CESTUI QUE TRUST*. — A trustee wrongfully conveyed the trust *res* to the defendant who had notice of the trust. The fraudulent trustee resigned and a new trustee was appointed, who failed to proceed against the defendant within the period of limitations. The infant *cestuis que trustent*, having come of age, now bring suit to charge the defendant as constructive trustee. *Held*, that the plaintiffs are barred by the Statute of Limitations. *Hart* v. *Citizens' National Bank*, 185 Pac. (Kan.) 1.

Because of the wrong done to him, a *cestui que trust* is given a direct right in equity against a *mala fide* purchaser. *Parker* v. *Hall*, 2 Head (Tenn.), 641; *Rolfe* v. *Gregory*, 34 L. J. Ch. (N. S.) 274. Equity also allows the trustee a *locus penitentiae* by permitting him to maintain a bill against the transferee. *Wetmore* v. *Porter*, 92 N. Y. 76. Where such a right of the trustee is recognized and the period of limitations has run against him, it is held that the *cestui que trust*, although under disabilities, is also barred. *Johnson* v. *Cook*, 122 Ga. 524, 50 S. E. 367; *Willson* v. *Louisville Trust Co.*, 102 Ky. 522, 44 S. W. 121. But where the repentant trustee has no standing in court to undo his wrong, his delay can have no effect upon the rights of the *cestui que trust*. *Parker* v. *Hall*, *supra*; *Elliott* v. *Landis Machine Co.*, 236 Mo. 546, 139 S. W. 356. Upon principle, it should be immaterial whether the wrongful trustee has or has not a *locus penitentiae*. Such a right is predicated upon his duty toward the *cestui que trust*, and should be considered in aid of, or alternative to, the *cestui's* own direct right. See Roscoe Pound, "The Decadence of Equity," 5 COL. L. REV. 20, 34; 12 HARV. L. REV. 132. In the instant case, the delay was by a substituted trustee to rectify the wrong of his predecessor. Here, also, by similar reasoning, the independent right of the *cestui que trust* should remain until it has itself been barred by the statute. This should be true whether the nature of the interest of the *cestui que trust* is conceived of as real or personal. See Austin W. Scott, "The Nature of the Rights of the *Cestui que Trust*," 17 COL. L. REV. 269, 282.

WAR — PRIZE — CLAIM FOR FREIGHT AND DEMURRAGE BY NEUTRAL SHIPOWNERS AGAINST ENEMY CARGO. — A cargo of tobacco was shipped from San Domingo to Copenhagen in a neutral vessel and was seized at Kirkwall and sold as enemy property having an enemy destination, under the Reprisals Order in Council of March 11, 1915. The owner of the ship claims to be allowed, out of the proceeds of the sale of the cargo, the freight charges and damages for the delay of the ship beyond the time the original voyage would have consumed. *Held*, that only *pro rata* freight charges and no damages for demurrage be given. *The Heim*, [1919] P. D. 237.

Prize courts in the past have generally recognized the lien of a neutral shipowner on a condemned enemy cargo for the whole freight, unless his right is forfeited by the ship carrying contraband or breaking a blockade or by other misconduct. *The Race-Horse*, 3 Rob. 101. See 3 Rob. 304, note; *The Frances*, 8 Cranch (U. S.), 418, 419. In the principal case, in restricting the claimants to *pro rata* freight, the court relied, not on any such forfeiture, but on a test laid down in a recent case. *The Juno*, [1916] P. D. 169. That case is distinguishable from the present in that there the claimants were British subjects. In the ordinary case of a subject of a belligerent trading with the enemy, his property would be subject to condemnation since his conduct amounts to a breach of allegiance. *The Hoop*, 1 Rob. 196; *The Jonge Pieter*, 4 Rob. 79. But the special circumstances of *The Juno* justified the court in restoring the ship and in giving *pro rata* freight. The right of a neutral, on the other hand, to deal with either belligerent, except in contraband and blockaded areas, has been generally recognized, at least since the Declaration of Paris in 1856. See *The Juno*, *supra*, 174; CHITTY, LAW OF NATIONS, 108. If the completion of the

voyage is prevented by the seizure of the cargo as enemy goods, the shipowner should receive the full freight which he would rightfully have earned had not the seizure taken place. *The Fortuna*, Edw. Adm. 56; *The Prosper*, Edw. Adm. 72. See CARVER, CARRIAGE BY SEA, 6 ed., § 556. This line of reasoning would also entitle the claimants here to demurrage for delay caused beyond the time which the original voyage would have consumed. *Cf. The Anna Catharina*, 6 Rob. 10; *The Industrie*, 5 Rob. 88. This view has the support of the older text-writers. See 1 KENT COMM., § 125; POLSON, LAW OF NATIONS, 47. Compare the executive settlement of *The Wilhelmina*, PYKE, LAW OF CONTRABAND OF WAR, 189.

WILLS — CONSTRUCTION — GIFT TO A CLASS — DEVISE OF REMAINDER TO TESTATOR'S LIVING CHILDREN. — The testator devised land to his son for life, remainder in equal shares to his "living daughters." The son and three daughters survived the testator. Two of the daughters predeceased the son, and on his death the surviving daughter conveyed to the defendants. The plaintiffs, issue of one of the deceased daughters, brought ejectment to recover their mother's undivided interest. *Held*, that the plaintiffs recover. *Kohl* v. *Kepler*, 67 Pitts. L. J. 721.

The case turned on the question whether the word "living" referred to the time of the death of the testator or of the son. In direct and immediate gifts to a class, the class is determined at the time of the testator's death, unless a different intention appears from the will. *Davis* v. *Sanders*, 123 Ga. 177, 51 S. E. 298; *In re Ruggles' Estate*, 104 Me. 333, 71 Atl. 933. This is true even though the distribution is postponed to a later period. *Chasmar* v. *Bucken*, 37 N. J. Eq. 415. In the case of a gift by way of remainder or executory devise to a class described as the testator's heirs, next of kin, or relatives, the class is likewise to be ascertained at his death, not at the termination of the intervening estate. *Bullock* v. *Downes*, 9 H. L. Cas. 1; *Kellett* v. *Shepard*, 139 Ill. 433, 28 N. E. 751; *Boston Safe Deposit & Trust Co.* v. *Parker*, 197 Mass. 70, 83 N. E. 307. Where the gift is to the children, the same rule applies; the children *in esse* at the death of the testator take a vested interest in the remainder, subject to open up and let in those born afterward, before the time of distribution. *McLain* v. *Howald*, 120 Mich. 274, 79 N. W. 182; *Haug* v. *Schumacher*, 166 N. Y. 506, 60 N. E. 245; *Inge* v. *Jones*, 109 Ala. 175, 19 So. 435. The law prefers to construe a remainder as vested rather than as contingent. *Whall* v. *Converse*, 146 Mass. 345, 15 N. E. 660; *Doe* v. *Spratt*, 5 Barn. & Ad. 731. The rule accords with the presumed intention of the testator by preventing the disinheritance of the issue of a remainderman who may die during the existence of the preceding estate. *Hersee* v. *Simpson*, 154 N. Y. 496, 48 N. E. 890. The word "living" in the principal case may be applied with equal force to the time of the death of the testator as to that of the son. It was proper, therefore, for the court to follow, as it did, the general rules of construction outlined above.

BOOK REVIEWS

THE LAW AS A VOCATION. By Frederick J. Allen. With an introduction by William Howard Taft. Cambridge: Harvard University. 1919. pp. viii, 83.

A small book presenting, as its preface promises, a "clear, accurate and impartial study of the law," in order to assist the choice of those inclining to enter the profession, would be a miracle if wholly successful. To cover the subject in so few words is impossible; and this work is rather a section of a